

12.3. 2024
item No.20
n.b.
ct. no. 551

FMA 1026 of 2018

Bishnu Chik Baraik.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Subir Banerjee,
Ms. Ruxmini Basu Roy,
.....for the appellant.
Ms. Sucharita Paul,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated June 5, 2017 passed by the learned Tribunal, Jalpaigiri, in M.A.C. case No. 290 of 2011.

The present appellant being the claimant preferred an application before the learned Tribunal under Section 166 of the M. V. Act for getting compensation.

The fact of the accident as stated in the claim application is as follows:-

On October 20, 2011 at about 5.P.M. while the injured was proceeding towards his residence by travelling one Hyundai I-10 car bearing registration No.WB 70/B-3209 and reached near Section no.7, Nimtijhora T.E. on NH 31 under P. S. Kalchini, District Jalpaiguri, one truck bearing no. GJ-01-BY-5541, which was proceeding towards the same direction. Suddenly, the driver of the said truck stopped his vehicle without giving any indication and as a result, the vehicle of the said injured

hit against the back portion of the said truck. Consequently, the injured sustained serious injury. After the accident, the injured was taken to Alipurduar Hospital and from there the injured was transferred to the Paramount Hospital Pvt. Ltd., Siliguri. The injured was under treatment at Paramount Hospital from 21.10.21 to 27.10.2011. As the injured has incurred huge amount of money for his treatment, he filed the claim case before the learned Tribunal. The claim case was contested by the Insurance Company by filing written statement. The owner of the offending vehicle also filed written statement, but did not contest the case ultimately. Consequently, the Insurance Company has contested the case on that available grounds by filing an application under Section 170 of the M. V. Act.

After hearing the parties and after receiving the evidences, the learned Tribunal had dismissed the case.

Being aggrieved by and dissatisfied with the order of dismissal, the present appeal has been preferred.

Learned advocate appearing on behalf of the claimant submits that the impugned award passed by the learned Tribunal is erroneous. The learned Tribunal has not considered the medical expenses incurred by the claimant though the evidences for such medical expenses has been sufficiently proved. He further submits that the P.W. 2 has appeared before the learned Tribunal, who deposed and proved medical documents.

Mr. Banerjee further submits that the learned Tribunal has only dismissed the case on the grounds that the claimant did not prove the loss of income due to partial disablement in this case. He further argued that the observation of the learned Tribunal is erroneous. The learned Tribunal should have awarded the compensation on the grounds of medical expenses and also on the basis of ground of non-pecuniary damages i.e. pain and suffering sustained by the injured during hospitalization and during medical treatment.

In support of his contention Mr. Banerjee placed reliance upon the observation of the Hon'ble Supreme Court in the case of ***R. D. Hatangari Vs. Pest Control of (India) Pvt. Ltd.***, wherein the Hon'ble Supreme Court has held that in case under Section 166 of the M. V. Act, the claimant is entitled to get compensation under pecuniary head as well as and non-pecuniary damages.

Mr. Banerjee further argued that claim case has been sufficiently proved before the learned Tribunal, so the claimant is entitled to get the compensation on the ground of medical expenses and non-pecuniary damages.

Ms. Paul, learned advocate appearing on behalf of the Insurance Company submits that the claim case was dismissed by the learned Tribunal on two fold grounds; firstly, the learned Tribunal has held that the claimant has failed to proved the rash and negligent driving on the part of the driver of the offending truck bearing

registration no.GJ-01-BY-5541 and consequently, the claimant could not prove his loss of income due to such accident.

Ms. Paul, further submits that the P.W. 1, i.e. injured, admitted that the so-called offending truck was proceeding in front of his car i.e. Hyundai I-10. She emphasized that due to application of break, the accident was happened. The driver of the I-10 car i.e. injured himself was also negligent to the fact that when the car proceeding in front of him has applied the break; the driver of the car proceeding behind the track must have to apply the sudden break, but in this case there is no evidence that the injured has put his break to stop his car. He further argued that there is no eye witness in the accident. She further pointed out that the charge-sheet of the police case arising out of the said accident, wherein the investigating officer has not clearly spelt about rash and negligent driving of the driver of the so-called offending truck.

Ms. Paul further argued that the learned Tribunal has elaborately discussed the matter in the impugned judgment and after the discussion the learned Tribunal is of view that rash and negligent driving of the so-called offending driver has not been proved by the claimant. Thus, the claim application was dismissed.

Ms. Paul further argued that the observation of the learned Tribunal is very much correct. The negligence to

the said accident is only on behalf of the present injured, so the injured is not entitled to get any compensation.

Heard the learned advocates for the parties and perused the paper book as also the observation of the learned Tribunal.

The fact of the accident as appeared from the F.I.R. as well as the statement of P.W. 1 and the claim application that the truck was proceeding in front of car i.e. I-10, which was driven by the present appellant. The truck has put the sudden break and stopped the truck, the I-10 Car, which was running behind the truck has dashed at the back side of the car. It appears from the investigation of the police that wife of the present appellant was died in such accident, who was sitting at the I-10 car with the present appellant. So, the collusion between the two vehicle was so severe that a person has lost her life and the present appellant has suffered injury. It is true that the I.O. has not spelt out regarding the rash and negligent driving of the offending vehicle.

Considering the prima facie evidences under Sections 279, 338, 304A IPC, the proof of ingredients to the offences in IPC is separate considering nature of proof requires to this case. It also appears that no eye witnesses was adduced before the learned Tribunal to substantiate the fault of either of the parties. The Insurance Company has also not put any question to the P.W. 1 regarding the distance between the two running cars and the speed

thereon. The Insurance Company also not called the driver of the so-called offending vehicle to disprove the evidentiary value of P.W.1. However, it is true that on the principle of *res ipso loquitur* means **“where there is an accident, there must have a negligence”**. In this case, the negligence of either of the parties has not been clearly proved.

It is the argument of Mr. Banerjee that the accident happened due to rash and negligent driving of the driver, when he suddenly applied the break without any signal. It can be a reasonable question that why the present appellant has not put the break when he has seen that the driver of the truck has put the sudden break. The obvious answer is – the speed of the I-10 car was so high that the appellant could not stop the car.

Considering the entire facts and circumstances, I am of the view that accident occurred due to the rash and negligent driving of the drivers of both the vehicles. The impact of the accident was so much, that one person has lost her life. So, it can be presumed that both cars were running in a very high speed and due to the sudden break applied by the truck, the present appellant could not control the speed and dash at the back side of the truck. So, negligence to cause such accident is contributory between each driver.

In considering the claim of compensation in this case, it appears to me that the appellant has not suffered

any permanent disability. So, he is not entitled to get the compensation under the structured formula.

However, in considering the evidences of P.W. 2, it appears to me that the claimant is entitled to pecuniary damages in this case; that would be Rs.80,244/- towards the charge of hospital, +Rs.5,600/- towards the fees of doctors and Rs.3000/- towards the fees of one doctor and also Rs.20,110/- towards the medicine bill and loss would Rs.2,156/-, totaling amount to Rs.1,12,398/-

In considering the non-pecuniary damages according to law laid down by the Hon'ble Supreme Court in the case of ***R. D. Hatangari (supra)***, it appears to me that the claimant/appellant was hospitalized from 21.10.2011 to 27.10.2011 and he must have suffered mental pain and agony including physical discomfort. So, in the non-pecuniary head, I think it would be proper and justified, if an amount of Rs.50,000/- is awarded in favour of the claimants. So after added all head of the pecuniary and non-pecuniary damages comes to Rs.1,62,398/-. The present appellant is responsible to contribute only 50% of the compensation. So the Insurance Company that the insurer of the offending track is liable to pay the 50% i.e. Rs.81,199/-.

Under the above observation, the award passed by the learned Tribunal is hereby set aside.

The appeal being, FMA 1026 of 2018 is disposed of with a direction to the Insurance Company to pay the

compensation to the claimant/appellant amounting to Rs.81,199/- along with 6% per annum from the date of filing of the claim application within six weeks through the office of the learned Registrar General, High Court, Calcutta.

On such deposit, the claimant is entitled to get the compensation from the office of the learned Registrar General, High Court, Calcutta on usual terms and conditions subject to ascertainment payment of deficit court fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit Court fees, if any.

Accordingly, FMA 1026 of 2018 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)